IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8536 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIVEK B DESAI - Petitioner(s)
Versus
SECRETARY EDUCATION DEPARTMENT & 4 - Respondent(s)

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Appearance :

MR JAL SOLI UNWALA for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1,
MR DC DAVE for Respondent(s) : 2-5

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 18/07/2006

ORAL JUDGMENT

1. Rule. Learned AGP Shri Siraj Gori waives service of rule on behalf of respondent no.1. Learned

advocate Shri D.C. Dave waives service of notice of rule on behalf of respondents no. 2 to 5. Considering the urgency involved in the petition, the petition is taken up for final disposal today.

2. The petitioner is a student who has received admission in the Course of Master of Business Administration (MBA for short) for the academic year 2005-2006 in the respondent no.2 University. It is not in dispute that the petitioner met with a vehicular accident on 6-2-2006. He received serious injuries and had to be hospitalized for an extended period. The petitioner was actually hospitalized from 6-2-2006 to 2-3-2006 in Dr. Desai's Orthopedic Centre and thereafter, from 3-3-2006 to 28-3-2006 at Apollo Hospital, Ahmedabad. The certificates of the concerned hospitals are produced on record. On account of his injuries, the petitioner could not attend classes for the Course in question for a period between 6-2-2006 to 31-3-2006. On account of his absence from the

studies, the petitioner's presence was not to the standard as required by the respondents. It is however, the case of the petitioner that the respondents have the power to condone the deficiency in the presence of a student, provided sufficient reasons are made out. It is the case of the petitioner and to which there is no serious dispute that Ordinance 61 provides that if the total attendance of a student in a term falls short of requirement under Ordinance 60 either on account of bona fide illness or for any other extraordinary reasons deemed sufficient by the respective authorities,such deficiencies may be condoned by the Syndicate when such deficiency is above 25% but not exceeding 40%. In other words when the attendance of student is between 50% to 35%. The respondents have not seriously disputed that Syndicate has powers to condone such delay in appropriate cases. The respondents have also not disputed that the deficiency of attendance of the petitioner was above 25% but not exceeding 40%. In other words, the attendance of the

petitioner was between 35% to 50%.

2.1 The case of the petitioner was considered by the Syndicate of the respondent no.2-University. However, the Syndicate decided not to condone the deficiency in attendance of the petitioner.

2.2 It appears that initially the petitioner despite his deficiency in the attendance was permitted to attend certain papers of the examination conducted by the respondent no.2 University at the end of the academic term. Thereafter, by virtue of an order passed by this Court dated 23-4-2006, the petitioner was permitted to appear in the examination making it clear that same shall not create equity in his favour.

2.3 The case of the petitioner in above factual background is that the respondents erred in not exercising the powers to condone the deficiency in the attendance. It is the case of

the petitioner put forth through his learned advocate that the petitioner had made out good grounds for condonation of deficiency. There was no dispute or doubt about the fact that the petitioner met with an accident and the genuineness of the grounds which prevented the petitioner from attending his regular classes. The petitioner was actually hospitalized for a period between 6-2-2006 to 28-3-2006. Almost immediately upon his discharge from the hospital, the petitioner started attending his regular classes from 1-4-2006. It is therefore, the case of the petitioner that Syndicate should not have turned down the request of the petitioner for condoning the deficiency.

3. On the other hand the case of respondents no. 2 to 5 as placed before this Court through affidavit in reply dated 10-7-2006 as well as through submissions made by the learned advocate primarily is that Syndicate has discretionary powers either to condone the deficiencies or not. It is further contended that Syndicate did

not find appropriate reasons to condone such deficiency. Learned advocate Shri Dave further submitted that in last two years, Syndicate has not exercised such powers in favour of any student attending such a Course. He submitted that this Court should not interfere in exercise of discretion by the Syndicate. He further submitted that the Syndicate as a matter of policy has decided not to condone such deficiencies. He submitted that though such a decision is not available on the file, through a consistent practise, Syndicate can be taken to have adopted such a course. He further submitted that this Court should not issue any mandamus directing the respondent no.2 University to condone the deficiency.

4. Having heard the learned advocates at some length, I find that there is absolutely no dispute about the genuineness of the injuries received by the petitioner which kept him away from his studies. The petitioner actually was hospitalized for a period between 6-2-2006 to

28-3-2006. Necessary certificates in this regard are available on record. In any case, respondents have not doubted the injuries and the fact that the petitioner needed extensive medical treatment for the same.

5. Ordinance 61 clearly gives powers to the Syndicate to consider in appropriate cases question of condonation of deficiency upto 40%. The Ordinance clearly provides that cases in which the deficiencies of presence of the student is more than 25% but not less than 40% or in other words where attendance is between 50% to 35%, the Syndicate may condone such deficiencies if it is found that absence was on account of bona fide illness or any extraordinary reasons deemed sufficient by the Syndicate. In the present case, it is not possible to dispute that the reason that kept the student out of his classes was extraordinary reason nor can it be disputed that same would be sufficient reason for him not to be able to attend the classes. Surely, when the student was admitted in a hospital, he was not expected to

attend his classes. With this aspect of the matter virtually there is no dispute. Without specifying any reasons, Syndicate turned down the request for condonation of deficiency. In the affidavit in reply also, no specific reasons are indicated which prompted the Syndicate to take such a decision. In any case, learned advocate Shri Dave for the respondents no. 2 to 5 was candid when he stated before this Court that even in files leading to Syndicate taking such a decision, there are no notings which would suggest any background reasons for Syndicate not exercising its discretionary powers. It can thus be seen that the respondents have not attributed any reason for not exercising their discretionary powers vested in the Syndicate.

6. The contention of the learned advocate Shri Dave for respondents no. 2 to 5 that Syndicate has taken a conscious decision not to condone such a deficiency in all cases, is neither possible to discern from the material on record nor

possible to countenance in facts of the present case. Even if in recent past, there are no instances where Syndicate has condoned such deficiency to begin with, the facts of each case would stand slightly on different footing. In the present case, the petitioner has made out strong grounds for urging that such discretion should have been exercised. A student who had met with a serious accident who was forced to rest in hospital receiving medical treatment can be easily said to have made out a case for extraordinary reason to condone the deficiency. Without any valid reasons, Syndicate refused to exercise its discretionary power and condone the deficiency. No additional reasons are available on record none can be supplemented later on. In that view of the matter, I find that Syndicate and through the Syndicate, University erred in refusing to exercise discretion vested in it. This Court has therefore every reason to intercept.

7. In the result, I find that the prayers made in

the petition are required to be granted. The respondents are therefore, directed to condone the deficiency in the presence of the petitioner to the extent of his forced absence on account of his vehicular accident resulting into serious injuries. In other words period between 6-2-2006 to 31-3-2006 shall be ignored for the purpose of calculating deficiency in his absence. It is not in dispute that thus considered, the presence of the petitioner would be well within the minimum required presence.

8. In that view of the matter, the petition is required to be disposed of on the basis of above directions. The respondents shall take further steps to declare the result of the petitioner.

9. With these directions, the petition is disposed of. Rule made absolute with no order as to costs.

Direct service to respondent no.2 is permitted.

(Akil Kureshi,J.)

(raghu)